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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,386	09/05/2003	Donald L. Simmons	5600-85	9584

7590

12/20/2005

Mr. F. Michael Sajovec  
MYERS BIGEL SIBLEY & SAJOVEC, P.A.  
4140 Parklake Avenue, Suite 600  
Releigh, NC 27612

EXAMINER

AFREMOVA, VERA

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



### **DETAILED ACTION**

Claims 1-39 are pending and subject to restriction requirement.

#### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-26, drawn to a viable probiotic formulation comprising a core preparation with probiotic bacteria and an enteric coating, classified in class 424, subclass 93.1, for example.
- II. Claims 27-39, drawn to a process for preparing a viable probiotic formulation comprising a core preparation with probiotic bacteria and an enteric coating, classified in class 424, subclass 93.1, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case a viable probiotic formulation comprising a core preparation with probiotic bacteria and a coating resistant to enteric or gastric juices can be made by another and materially different processes including the use of various materials and encapsulation techniques, for example: see IDS reference US 5,633,012 (col. 5, lines 5-35).

Because these inventions are distinct for the reasons given above and the search required for one group is not required for the other group, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Afremova whose telephone number is (571) 272-0914. The examiner can normally be reached from Monday to Friday from 9.30 am to 6.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached at (571) 272-0926.

The fax phone number for the TC 1600 where this application or proceeding is assigned is (571) 273-8300.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology center 1600, telephone number is (571) 272-1600.

Vera Afremova

AU 1651

December 12, 2005

A handwritten signature in black ink, appearing to read 'V. Afremova', with a stylized, flowing script.

VERA AFREMOVA

PRIMARY EXAMINER